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U. S. DISTRICT COURT
FILED AT CLARKSBURG, W. VA.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SEP 11 1986

United States of America,

Plaintiff

v.

John Boyce, Reilly Tar & Chemical
Corporation and Westinghouse Electric
Corporation,

Defendants

CIVIL ACTION NO. 85-0244-C(K)

CONSENT DECREE

The parties herein, the United States of America, plaintiff,
and Reilly Tar & Chemical Corporation and Westinghouse Electric
Corporation, defendants (hereafter referred to as the Settling
Defendants), having agreed to this Consent Decree,

WHEREAS, the United States of America filed a complaint
October 1, 1985, against John Boyce, Reilly Tar & Chemical
Corporation and Westinghouse Electric Corporation pursuant
to Section 107 of the Comprehensive Environmental Response,
Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607,
to recover costs incurred by the United States in responding
to an imminent and substantial endangerment to the public
health or welfare or the environment from May, 1983, to

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January, 1984, at the Hoult Road site located in Fairmont, West Virginia, and owned by Big John Salvage Co., Inc., and

WHEREAS, the Settling Defendants filed Answers to the plaintiff's complaint on or about December 20, 1985, in which they denied all of the United States' claims contained in the complaint and;

WHEREAS, the United States and the Settling Defendants agree that settlement of this action and entry of this Consent Decree without further litigation and without any admission as to liability is the most appropriate means of resolving this matter and is in the public interest;

THEREFORE, it is Ordered, Adjudged and Decreed that:

I

JURISDICTION

1. This Court has jurisdiction of the subject matter for the limited purpose of this Consent Decree and over the parties consenting hereto pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 9607, 9613(b).

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II

PAYMENTS

2. Upon entry of this Consent Decree, the Settling Defendants shall pay to the United States the sum of \$350,000 in satisfaction of and to settle all claims raised in this lawsuit concerning EPA's incurrence of response costs at the Hoult Road site in Fairmont, West Virginia, from May, 1983, up to the date of entry of this Consent Decree.

3. Payment shall be made by certified check made payable to the "EPA Hazardous Substances Response Trust Fund" and mailed to the United States Environmental Protection Agency, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251. Each Settling Defendant shall send a photostatic copy of its check to the United States Attorney, Northern District of West Virginia, United States Post Office and Courthouse Building, 500 W. Pike Street, Clarksburg, West Virginia 26301, ATTN: David E. Godwin, Esquire, and to the Office of Regional Counsel, United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, ATTN: Martin Harrell, Esq., when payment is made.

4. Should the Settling Defendants fail to pay a total of \$350,000 within 30 days from the date of entry of this Decree, the United States reserves the right to proceed against either Settling Defendant to recover any unpaid portion of the \$350,000 and to collect interest on the outstanding principal at the legal rate.

5. Entry into this Consent Decree does not constitute, and shall not be construed as, any admission of liability, wrongdoing, violation of law or fault on the part of either Settling Defendant hereto, nor as an admission that any costs incurred by plaintiff were properly incurred or are recoverable pursuant to law. The Settling Defendants specifically deny any liability, wrongdoing, violation of law and fault in any respect. Payments by the Settling Defendants under the provisions of this Consent Decree are made only for the purpose of compromise and avoidance of the expense of litigation, and this Consent Decree shall not constitute or be construed as an adjudication or finding on the merits of any liability, fault, violation of law or any other wrongful conduct or practice on the part of either Settling Defendant.

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III

STATUS OF THE SITE

6. The plaintiff believes that the response actions taken by the Environmental Protection Agency (EPA) and Reilly Tar & Chemical Corporation at the Hoult Road site from July, 1983, to April, 1985, have removed the imminent and substantial endangerment to the public health, welfare or the environment presented by conditions at the site. EPA is not currently aware of any imminent and substantial endangerment to the public health, welfare or the environment presented by the Hoult Road site. However, nothing in this Consent Decree limits the right of the United States to take any action authorized by law should the site later be found to present an imminent and substantial endangerment to the public health, welfare or the environment. EPA specifically notes that the removal of sedimentation basins presently used to collect run-off from the cullet pile area or failure to maintain them in proper working condition could result in an imminent and substantial endangerment to the public health, welfare or the environment.

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IV

COVENANT OF THE PLAINTIFF NOT TO SUE

7. In consideration of and upon timely receipt of payment of \$350,000 by the Settling Defendants, the plaintiff hereby covenants not to sue the Settling Defendants for any claims and any and all associated costs, including administrative expenses, attorneys' fees and interest, incurred by the plaintiff in connection with the response action taken at the Hoult Road site by EPA as of the date of entry of this Consent Decree.

8. This covenant not to sue extends only to the Settling Defendants.

9. In any pending or future action against non-settling parties, the Parties agree and this Court hereby finds that the principles of Section 4 of the Uniform Contribution Among Joint Tortfeasors Act (1955) shall govern, and that, accordingly, the Settling Defendants shall not be liable to make contribution to any person.

The Parties represent that this covenant is made in good faith and that the amount required to be paid pursuant to paragraph two, above, under all the circumstances of this case and only for purposes of settlement, represents a fair and

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equitable apportionment of the Settling Defendants alleged responsibilities for the response costs incurred by the United States at the Hoult Road site.

The Parties recognize the possibility that there may be brought or asserted against the Settling Defendants suits or claims for contribution for liability by persons or entities that have not entered into this settlement which might, if successful, obligate the Settling Defendants to pay amounts in addition to those required pursuant to this Decree. It is the expressed intention of the Parties that the Settling Defendants not be required to pay amounts in contribution or be required to remain as parties in any suit or claim for contribution. The Parties also agree that the United States shall be under no obligation to assist the Settling Defendants in any way in defending any suit for contribution. The United States and the Settling Defendants believe that the terms of this Consent Decree constitute a fair and reasonable agreement.

V

COVENANT OF THE SETTLING DEFENDANTS

10. The Settling Defendants agree not to make any claims pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, or any other provisions of law directly or indirectly against the Hazardous Substance

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Response Trust Fund established by CERCLA, or other claims against the United States or against each other for expenses related to this case and this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d).

VI

REOPENERS

11. Notwithstanding any other provisions of this Decree, the plaintiff reserves any and all rights it may have to institute a new action, if necessary, to compel one or more of the Settling Defendants to perform additional response measures at the Hoult Road site or to reimburse the United States for future cleanup costs, if

1) conditions unknown and undetected by the plaintiff on the effective date of this Consent Decree are discovered at the Hoult Road site which present or may present an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threat of release of hazardous substances from the Hoult Road site; and/or

2) plaintiff receives new information not known and which was not available on or before the effective date of this Consent Decree concerning the nature of the substances at the Hoult

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Road site or the appropriateness of past response actions which indicates that the Hoult Road site may present an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threat of release of hazardous substances.

12. Nothing contained in this Decree shall be construed to limit the right of the plaintiff to take judicial or administrative action to enforce the federal environmental laws except as provided in paragraph seven, above.

VII

JUDGMENT

13. This Consent Decree represents final judgment in this action under Fed. R. Civ. P. 54, and this Court retains jurisdiction over this Decree to enforce, construe, implement, modify, terminate, or reinstate the terms of this Consent Decree, or to provide any further relief as the interests of justice may require consistent with this Decree.

The Parties enter into this Consent Decree and submit it to the Court for approval and entry.

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Each of the signatories to this Decree certifies that he or she is fully authorized to enter into the terms and conditions of the Decree and to bind the party represented by him or her to this Decree.

For the Plaintiff:

UNITED STATES OF AMERICA

BY: 

F. HENRY HARICHT II
Assistant Attorney General
Land and Natural Resources
Division

BY: 

CYRUS S. PICKEN, Trial Attorney
Environmental Enforcement Section
Land and Natural Resources Division

BY: 

WILLIAM A. KOLIBASH
United States Attorney
Northern District of West Virginia

BY: 

DAVID E. GODWIN
Assistant United States Attorney
Northern District of West Virginia

For the Settling Defendants:

REILLY TAR & CHEMICAL CORP.

BY: 

ROBERT POLACK, Esq.

WESTINGHOUSE ELECTRIC CORP.

BY: 

ROGER E. WILLS JR., Esq.

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BY: Richard H. Mays

Acting Assistant Administrator for Enforcement
and Compliance Monitoring
United States Environmental Protection
Agency

BY: M. Elizabeth Cox

M. ELIZABETH COX
Attorney/Advisor, Office of Enforcement
and Compliance Monitoring
United States Environmental Protection
Agency

BY: B. M. Diamond

BRUCE M. DIAMOND
Regional Counsel
Region III, U.S.E.P.A.

BY: Martin Harrell

MARTIN HARRELL
Assistant Regional Counsel
U.S.E.P.A., Region III

APPROVED AND SO ORDERED:

William M. Kidd, Jr.
WILLIAM M. KIDD, J.

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